



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 16, 1996

Mr. James T. Jeffrey, Jr.
Remington & Jeffrey
1306 W. Abram
Arlington, Texas 76013-7100

OR96-1475

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100144.

The Town of Pantego (the "town") received an open records request for information which you claim is the subject of a civil lawsuit in federal court. The requested information appears to relate to records brought to a deposition by a party to the lawsuit. You have submitted a copy of the requestor's letter and a copy of the Plaintiff's Original Complaint and contend that section 552.103 of the Government Code excepts the requested information from required public disclosure. We have considered the exception you claim. You did not, however, submit to our office actual copies of the requested information for our review as required under section 552.301(b).¹

Section 552.103(a) excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and,
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

¹Pursuant to section 552.303(c) of the Government Code, on June 12, 1996, our office notified you by letter sent via facsimile that you had failed to submit the information required by section 552.301(b). In your response letter to our office, dated June 18, 1996, you stated "we simply cannot determine what documents Watson is seeking."

Section 552.103(a) was intended to prevent the use of the Open Records Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 (1989) at 4. The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 (1990) at 3. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 (1990) at 5, 511 (1988) at 3.

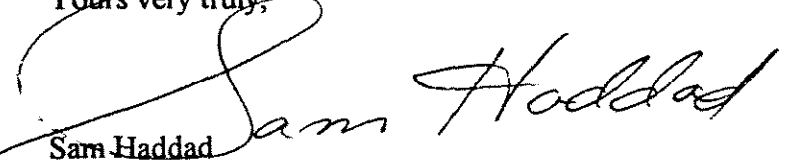
The town has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. To show the applicability of section 552.103, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and that (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The town must meet both prongs of this test for the information to be excepted under section 552.103(a). You assert that all of the information submitted is excepted from required public disclosure under section 552.103 of the Government Code based on a lawsuit styled *Clint Watson, et al. v. The City of Pantego, et al.*, Case No. 496-CV-360-Y, in the United States District Court for the Northern District, Fort Worth Division. The lawsuit alleges harassment and discrimination, among other claims. You have submitted a copy of the "Complaint" for our review. Accordingly, you have satisfied the first prong by demonstrating that the town is a party to the pending litigation.

In order to secure the protection of the "litigation exception," the second prong of section 552.103(a) requires that a governmental body demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision Nos. 588 (1991), 551 (1990). You assert that section 552.103 applies, because the information sought by the requestor relates to the litigation in which the town is a party, as evidenced by the complaint.

We have examined the information and documents submitted to us for review. In this instance you have not made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). As you failed to submit the requested information, our office lacks the necessary information to conclude that the town may withhold the requested information under section 552.103. We note that when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request; therefore, we suggest that you seek clarification from the requestor. Open Records Decisions Nos. 563 (1990), 561 (1990) (a governmental body must make a good faith effort to relate a request to information which it holds).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 100144

cc: Mr. Clint Watson
P. O. Box 42
Granbury, Texas 76048-0042
(w/o enclosures)